

MEMORANDUM

TO: Mayor Bonnette and Members of Council

FROM: Moya Leighton CPA, CGA, MBA

DATE: April 17, 2020

MEMORANDUM NO.: CORPSERV-2020-0002

RE: Bill 108 – Proposed Regulations related to ERO 019-1406

PURPOSE OF THE MEMORANDUM:

The purpose of this memorandum is to inform Council of staff's concerns and questions related to the proposed Bill 108 regulations, and provide an outline of the ERO-019-1406 response that was submitted to the Ministry of Municipal Affairs and Housing on April 17, 2020.

BACKGROUND:

In May 2019, the Minister of Municipal Affairs and Housing released *More Homes, more Choice: Ontario's Housing Supply Action Plan*. In support of this Action Plan, *the More Homes, More Choice Act, 2019* (Bill 108) was introduced and received Royal Assent on June 6, 2019. This Bill has implications for many legislative areas and the following two schedules are of specific relevance to this memorandum:

- Schedule 3 – *Development Charges Act*
- Schedule 12 – *Planning Act*

On December 10, 2019 Bill 138, *Plan to Build Ontario Together Act, 2019* received Royal Assent. Schedule 10 (Development Charges) of Bill 138 amended Schedule 3, of Bill 108 and was proclaimed as of January 1, 2020. Development charges are a mechanism for municipalities to pay for the capital costs of infrastructure such as roads and sewers associated with new development.

The main changes related to development charges are:

- The introduction of installment payments for rental, institutional and non-profit housing.
- Freezing the development charge rate for all development types on the day that a site plan or zoning amendment application is received until the development is approved. Once approved, the developer has two years from this date to apply

for a building permit. The Development Charge rate is also frozen for that period of time.

On February 28, 2020, the Province released its latest regulations proposed for the *Development Charges Act* and the *Planning Act* with respect to the community benefits charge (CBC). These regulations are posted on the Environmental Registry of Ontario for public comment (<https://ero.ontario.ca/notice/019-1406>). The original deadline for submissions was March 30, 2020; however, this deadline was recently extended to April 20, 2020. Staff have submitted feedback on behalf of the Town of Halton Hills, taking into consideration opinions from the municipal finance sector and consultants specializing in growth-financing for municipalities.

Development Charges

In addition to the proclaimed changes noted above, a significant amendment has been proposed to the *Development Charges Act* through ERO-019-1406. The proposal is to return to the use of development charges to recover the growth-related capital costs of the following 'soft' services:

- Public libraries including library materials for circulation, reference or information purposes;
- Parks development, such as playgrounds, splash pads, equipment and other park amenities excluding the acquisition of land for parks;
- Recreation facilities such as community recreation centres and arenas

With this proposal, the recovery for municipalities would be 100% of the growth-related costs. When previously included in the *Development Charges Act*, soft services had a mandatory 10% reduction. Funding 100% of the costs for this growth-related infrastructure will reduce the amount required from the tax base.

Community Benefits Charges

Schedule 12 of the Bill 108 Act, as amended by Schedule 31 of Bill 138, will establish a new community benefits authority for municipalities under the *Planning Act*. Once proclaimed, this authority will allow for community benefits charges with respect to land being developed or re-developed.

The ERO has proposed that the community benefit charges (CBC) fund the costs related to parkland acquisition, affordable housing, parking and related by-law enforcement and child care facilities. A municipality can choose to establish a Community Benefits Charge Strategy and By-law to collect funds for these purposes, or it can apply the parkland dedication rate contained within the *Planning Act*.

The *Planning Act* as amended provides the following maximum percentages to be applied against proposed development as either parkland dedication or cash-in-lieu:

- 5% for residential development
- 2% for commercial or industrial development

Both of these amounts are less than the alternate standard of 1 ha per 300 units or 1 ha per 500 units that were previously permitted. These alternate amounts remain in effect until Bill 108 is finalized, including the \$11,000 per unit cap approved by Council in 2019, and reaffirmed in January 2020.

COMMENTS:

Development Charges- Proposed Regulatory Change

As noted through ERO, it is proposed that municipalities impose development charges to fully recover (100%) of the growth-related capital costs of soft services. A draft Bill 108 regulation had previously proposed that these services be funded through the community benefits charge, which would be based on a capped land value.

Staff believes that this is a very positive change. The development charges method is clear and well-rationalized in that it is linked to growth-related capital costs. In addition, more reliable financial planning can be performed using calculations from the Development Charges Study. Otherwise, if funded through the community benefits charge, staff would need to estimate potentially fluctuating land values. This change provides more funding certainty for these services.

Community Benefits Charges (CBC) - Proposed Regulatory Changes

The intent of the new community benefits charge is to complement development charges. It should be noted that details with regard to affordable housing and parking support were not provided in this proposal.

CBC Formula

It is proposed that the CBC be subject to a maximum prescribed percentage of the market land value the day before the building permit issuance. The Town of Halton Hills as a lower-tier municipality would be able to collect a maximum of 10% of the value of land under development. Upper tier municipalities have a maximum rate of 5%.

It is unclear as to how these percentages were arrived at or whether they are sufficient. In addition, there appears to be no allowance for geographical differences. It is one consulting firm's opinion that the legislation should allow for a maximum combined percentage of 15% within two-tier municipalities, i.e., if the upper tier does not use the full 5%, the upper tier should be allowed to transfer (by resolution) a portion of its allocation to the lower tier. There is also the thought that different rates should be applied to residential and non-residential development. Based on the consulting firm's preliminary analysis, consideration should be given to a lower non-residential rate based on the benefits received, and by extension, a higher residential rate.

In general, since there is no tie between land value and the increase in need for service, the CBC could be viewed as more of a tax.

As indicated earlier, the community benefits charges would support the growth-related capital costs of acquiring land for parks. It is not known why the acquisition of parkland is proposed under the CBC authority and not under the *Development Charges Act*. Like soft services, funding through development charges would provide greater certainty.

In addition to parkland acquisition, there are other community benefits resulting from development such as affordable housing, parking and by-law enforcement that could be considered by the municipality. The proposed regulations did not include a definition for “other community benefits”. Could cultural facilities such as a gallery or theatre, not currently eligible for development charge funding, be considered a community benefit?

The municipality would need to demonstrate a connection between the CBC being levied and the increased need for community services associated with the new development. Further to this point, will there be service caps similar to the development charges framework?

It is also not known what kinds of capital infrastructure for community services would be eligible for funding. For example, does it include feasibility studies, land, buildings, capital leases, furnishings and equipment? Will the costs of land appraisals for parkland and the other community services be recoverable through the CBC? Will the cost of an appeal to LPAT to support the community benefits charge be funded from CBC revenues? There are many questions around what the community benefits charge will specifically fund, particularly in the area of community services.

Community Benefits Strategy

Before passing a Community Benefits Charge By-law, a municipality must prepare a Community Benefits Charge Strategy. The strategy must identify the items that a municipality intends to fund through CBC and must consult with the public when preparing the strategy. It is proposed through the regulation that the following be included in the strategy:

- The anticipated type, amount and location of development or re-development that would be subject to a community benefits charge
- The anticipated increase in the need for a specific community service resulting from new development or redevelopment
- A parks plan that examines the need for parkland in the municipality
- The amount of parkland per person currently being provided in the municipality and if this is planned to increase, decrease or stay the same
- The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment
- The excess capacity that exists in those specific services (service caps)
- Whether the increased provision of those specific service would also serve existing residents (benefit to existing)
- Any capital grants, subsidies or contributions from other levels of government or other sources like donations that are anticipated to be made to support those specific services.

Most of the items noted above are consistent with the requirements of the *Development Charges Act*, with the exception of the requirement to prepare a parks plan. A park plan for Town of Halton Hills was approved by Council as per report RP-2019-0013 which outlined the current level of parks provision, total area of parkland, and identified the need for additional parkland based on an updated provision standard.

CBC By-law Notice

It is proposed that municipalities follow the notice provisions, similar to those under the DC By-law:

- A notice would need to be placed in a newspaper or to every land owner in the area covered by the by-law through personal service (fax, mail, or email)
- A notice would also be required to be provided by personal service (fax, mail or email) to those individuals who:
 - Specifically request notice
 - Clerk of the Region of Halton
 - Secretary of every school board in the area covered by the by-law
- The notice needs to include the following statements:
 - The CBC by-law has been passed by Council
 - When the by-law was passed
 - Any person or public body can appeal the by-law to the Local Planning Appeal Tribunal (LPAT)
 - The last date to appeal the by-law
 - An explanation of the charges in the by-law
 - A description of the lands to which the by-law applies
 - An explanation of where and when a copy of the by-law can be examined

Like the Development Charges By-law, this notification process allows for the possibility of an appeal through LPAT which could be a lengthy and expensive process. If the appeal is not successful, would the CBC cover the costs?

Should there be a successful appeal of a CBC By-law, a municipality must provide full or partial refunds with interest. It is proposed that the interest rate paid on the amounts refunded, must not be less than the Bank of Canada rate in place on the date the by-law comes into force. Alternatively, the municipality can incorporate into its By-law, that the minimum interest rate would be the Bank of Canada rate updated on the first business day of every January, April, July and October.

Land Appraisals for the CBC

It is proposed that if the landowner believes that the CBC exceeds the amount legislatively permitted and pays the charge under protest, they have 30 days in which to provide the municipality with another land appraisal. If the municipality disputes the value of the land in the appraisal provided by the landowner, the municipality has 45 days to provide a second appraisal. If the municipality's appraisal differs by more than 5% from that provided by the landowner, the landowner can select an appraiser from

the municipal list of appraisers, and this third appraisal must be provided within 60 days. What is not known is whether this third appraisal would be legally binding. Also, there is some concern that the municipality would not have enough qualified land appraisers to meet the demands and turnaround times for potentially three appraisals.

Transition Timeline to the CBC

It is proposed that the specified date for municipalities to transition to the community benefits charges regime, should they choose to collect funds for community benefits would be one year after the date the proposed community benefits charge regulation comes into effect. During this year, municipalities are to prepare the CBC Strategy and pass the appropriate by-law. This does not appear to be an adequate amount of time for municipalities to transition to the CBC. This is a new methodology requiring the procurement of a consulting firm specializing in municipal growth financing (a limited number in the field), the collection of data, the completion of the study, an analysis of implications relative to the current parkland practice, a public engagement process and the passing of a by-law if the strategy proceeds. Staff is anticipating that this process would take at least 18 months depending on the availability of the selected consultant.

If the one year time line passes and municipalities have not prepared a CBC Strategy or a By-law, the question would be whether the municipality would have an option to pursue at a later date. It would also be interesting to know if the municipality can cancel a CBC Strategy and By-law after implementation should it be deemed financially unsustainable.

Building Code Act- Proposed Regulatory Changes

Under the ERO, it is proposed that the *Building Code Act*, 1992 be amended to add the Community Benefits Charge authority under Division A – Article 1.4.1.3. This would establish a mechanism to ensure that CBCs are paid before a building permit is issued. Staff is concerned about this application in the case of a draft sub-division agreement. In other words, how does the timing work for a draft sub-division agreement if land values are not confirmed until the day before a building permit is issued?

Staff has other questions related the regulations proposed for the *Development Charges Act* and the *Planning Act* with respect to the CBC authority and its application. These questions will be included in the ERO response:

1. Under what mechanism can a municipality recover the costs of introducing a CBC Strategy and By-law?
2. Do the upper and lower tier municipalities within a region need to agree on using the CBC authority or can separate decisions be made?
3. What is defined as developable land? Which land will be valued for parkland acquisition?
4. How are in-kind contributions of land to be treated? Can a municipality require parkland as part of a plan of subdivision or is it subject to negotiated approval from the developer? If it is not a legislated requirement, the Town could have significant challenges to obtain any parkland as part of future development areas.

5. Are planning studies related to growth funded through the community benefits charge or would they be funded through development charges?
6. When CBCs are collected, can they be used to purchase other services or are they to the purchase of parkland?
7. How are capital grants, subsidies or contributions factored into the calculation of eligible community benefit charges?

CONCLUSION:

This memo outlines the staff response to the Province's proposed regulations as they relate to the community benefits charge (CBC). These regulations are posted on the Environmental Registry of Ontario for public comment (<https://ero.ontario.ca/notice/019-1406>). Staff has addressed both the perceived benefits and challenges including the return of 'soft services' to the *Development Charges Act*, the CBC formula based on land values, the required CBC Strategy and Bylaw, the land appraisal mechanism and the transition timeline. Staff have submitted a response through the ERO on behalf of the Town of Halton Hills before the required deadline of April 20, 2020.

Reviewed and approved by,



Moya Jane Leighton, Town Treasurer and Director of Accounting



Jane Diamanti, Commissioner of Corporate Services



Brent Marshall, Chief Administrative Officer